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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.
12

13 KEVIN WILLIAM WISSMAN,

14 Defendant.
15

Case No. 2:23-cr-00116-TOR

United States' Sentencing
Memorandum and Motion for
Upward Variance

16 The Plaintiff, the United States of America, by and through Richard R. Barker,
17 Acting United States Attorney for the Eastern District of Washington, and Michael
18 L. Vander Giessen, Special Assistant United States Attorney for the Eastern District
19 of Washington, respectfully submits the following memorandum on the sentencing
20 of the Defendant, Kevin William Wissman.

21 On March 12, 2025, Mr. Wissman pleaded guilty without a plea agreement to
22 Theft from an Indian Tribal Organization, in violation of 18 U.S.C. § 1163. ECF No.
23 23 at 1. The United States moves the Court to vary upward from the applicable U.S.
24 Sentencing Guidelines ("USSG") provision by four offense levels. Accordingly, the
25 United States recommends the Court sentence Mr. Wissman to twelve months'
26 imprisonment followed by one year's supervised release, no fine, and \$916.81 in
27 restitution based on the Bureau of Indian Affairs' expert analysis of the stolen items'
28 fair market value.

1 On October 30, 2020, Mr. Wissman stole five infant moccasins and one
2 beaded glove that were on display in the Heritage Hall of the Northern Quest Resort
3 and Casino in Airway Heights, Washington. ECF No. 20 at 3; ECF No. 27 ¶¶ 9–10.
4 The items were displayed inside a shadow box and behind a glass display window
5 at the time Mr. Wissman stole them. ECF No. 27 ¶ 9. The items had been placed
6 there after their owner, a member of the Kalispel Tribe of Indians, loaned them to
7 the Kalispel Tribe’s facility for purposes of displaying cultural items from Kalispel
8 tribal members. ECF No. 27 ¶ 13. The owner inherited the items from his mother,
9 who was also a Kalispel tribal member and made the moccasins and glove for her
10 children in the early 1940s. ECF No. 27 ¶ 13. To date, the moccasins and glove Mr.
11 Wissman stole have not been recovered.

12 This theft was devastating to the Kalispel Tribe and the individual Kalispel
13 tribal member who owned these invaluable heirlooms. *See* ECF No. 27 ¶¶ 10, 13.
14 To the Kalispel Tribe, the moccasins and glove Mr. Wissman stole were not just
15 decorative items in a display case, but rather priceless and irreplaceable pieces of
16 Kalispel tribal history and culture. *See* ECF No. 27 ¶ 10. And to the individual
17 Kalispel tribal member who owned the moccasins and glove, the items “were of
18 utmost value to himself and his family” because “one pair of moccasins was his
19 when he was young” while “the remaining moccasins belonged to two of his other
20 brothers.” ECF No. 27 ¶ 13. “[T]he theft impacted [the owner and his whole family]
21 as the items c[an] no longer be passed on to the next generation.” ECF No. 27 ¶ 13.

22 Notably, the Kalispel Tribe has offered a \$25,000 reward for information
23 leading to safe recovery of the stolen moccasins and glove. Bates No. 00000137.04.
24 The Spokesman-Review published the Kalispel Tribe’s offer on the front page of its
25 December 29, 2024 issue. Bates No. 00000172. The Yakima Herald also published
26 the Kalispel Tribe’s offer in its December 29, 2024 issue. Bates No. 00000177.

27 The theft of any Indian cultural item is a serious offense, reflects blatant
28 disregard for the rule of law, and requires just punishment that affords adequate

1 deterrence to both the thief and other people in this district who contemplate illegally
2 taking, possessing, or trafficking in Indian cultural items. *See* 18 U.S.C. § 3353(a).

3 The United States’ legal analysis indicates it was a close call whether the
4 moccasins and glove Mr. Wissman stole qualified as “cultural heritage resource[s],”
5 which would have triggered a cross-reference to a different Guidelines provision
6 advising a higher imprisonment range. *See* USSG §§ 2B1.1(c)(4), 2B1.5. If the
7 stolen moccasins and glove had qualified as “cultural heritage resource[s],” the
8 advisory imprisonment range would have been six to twelve months rather than the
9 current zero to six months. *See* USSG §§ 2B1.5(a), (b)(3), 3E1.1(a).

10 Similarly, the \$916.81 valuation of the stolen moccasins and glove was
11 slightly under the \$1,000 threshold for charging a felony with a statutory maximum
12 penalty of five years’ imprisonment. *See* 18 U.S.C. § 1163.

13 In any event, Mr. Wissman’s theft of the moccasins and glove has caused
14 irreparable harm to the Kalispel Tribe and the individual Kalispel tribal member who
15 owned these invaluable heirlooms. Despite the United States’ thorough investigation
16 efforts, it appears the moccasins and glove Mr. Wissman stole may never be
17 recovered. A restitution order, even if paid, could never substitute for the priceless
18 and irreplaceable value that the Kalispel Tribe and the affected Kalispel tribal
19 member attributed to the stolen moccasins and glove. Regardless, it appears Mr.
20 Wissman cannot or will not pay any restitution order. ECF No. 27 ¶¶ 151–53.
21 Further, supervised release—which is primarily focused on rehabilitation—will not
22 atone for Mr. Wissman’s theft of these invaluable heirlooms. Imprisonment is the
23 Court’s only remaining punitive option.

24 From the beginning of his criminal career to the present, Mr. Wissman’s
25 history is replete with theft-related property crimes. He has been convicted of
26 twenty-one such crimes. Those convictions include residential burglary and theft of
27 a firearm committed in 2010 (for which Mr. Wissman was sentenced to a total of ten
28 years’ imprisonment), ECF No. 27 ¶ 99, four counts of forgery and two counts of
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1 residential burglary committed in 1996, ECF No. 27 ¶ 88, two counts of forgery and
2 one count of second degree possession of stolen property committed in 1996, ECF
3 No. 27 ¶ 86, two counts of forgery committed in 1996, ECF No. 27 ¶ 83, forgery
4 committed in 1996, ECF No. 27 ¶ 80, third degree theft committed in 1994, ECF
5 No. 27 ¶ 74, second degree burglary committed in 1992, ECF No. 27 ¶ 71,
6 shoplifting committed in 1992, ECF No. 27 ¶ 69, second degree burglary committed
7 in 1990, ECF No. 27 ¶ 61, second degree burglary committed in 1989, ECF No. 27
8 ¶ 58, shoplifting committed in 1989, ECF No. 27 ¶ 52, and second degree possession
9 of stolen property committed in 1982, ECF No. 27 ¶ 40. Mr. Wissman also has a
10 third degree theft charge with an alleged offense date of April 2, 2023 pending in the
11 Lower Kittitas County District Court. ECF No. 27 ¶ 108.

12 Mr. Wissman's October 30, 2020 theft of the moccasins and glove was not
13 merely, as he claims, "a theft of opportunity." ECF No. 28 at 3. It was a continuation
14 of a pattern of theft-related crimes he has committed throughout his adult life—from
15 as early as age eighteen to as recently as age fifty-nine, just two years ago. ECF No.
16 27 ¶¶ 40, 108.

17 A significant punishment is warranted in sentencing Mr. Wissman for the
18 instant offense. And this punishment requires more than credit for time served. Mr.
19 Wissman was arrested for the instant offense on January 15, 2025. As of June 12,
20 2025—the scheduled date of sentencing—Mr. Wissman will have 148 days' credit
21 for time served. But Mr. Wissman's detention from initial appearance through
22 sentencing was based entirely on his flight risk in the pre-judgment phase of this
23 case. *See* ECF Nos. 9, 17, 25, 26. It was not punitive. At sentencing, the Court should
24 impose a just punishment in addition to the time Mr. Wissman has served so far.

25 The statutory maximum sentence is twelve months' imprisonment. 18 U.S.C.
26 § 1163; ECF No. 27 ¶ 154. Only a sentence of twelve months' imprisonment is
27 sufficient but not greater than necessary to reflect the nature and circumstances of
28 the offense and the history and characteristics of Mr. Wissman; the need for the
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1 sentence imposed to reflect the seriousness of the offense, promote respect for the
2 law, and provide just punishment for the offense; and the need for the sentence
3 imposed to afford adequate deterrence to criminal conduct. *See* 18 U.S.C. § 3553(a).

4 Considering all, the Court should grant the United States’ motion for a four-
5 level upward variance and sentence Mr. Wissman to twelve months’ imprisonment
6 followed by one year’s supervised release, no fine, and \$916.81 in restitution.

7 Dated: May 29, 2025.

Richard R. Barker
Acting United States Attorney

8
9 *s/ Michael L. Vander Giessen*
Michael L. Vander Giessen
10 Special Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Defendant's counsel of record, Adrien L. Fox.

s/ Michael L. Vander Giessen
Michael L. Vander Giessen
Special Assistant United States Attorney